

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3458

Abidan Chavez Tevalan,

Petitioner,

v.

John Ashcroft,

Respondent.

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Petition for Review of
an Order of the Immigration
and Naturalization Service.

[UNPUBLISHED]

Submitted: September 24, 2003

Filed: September 30, 2003

Before RILEY, HANSEN, and SMITH, Circuit Judges.

PER CURIAM.

Abidan C. Tevalan, a citizen of Guatemala, petitions for review of an order of the Board of Immigration Appeals (BIA), which affirmed an Immigration Judge's (IJ's) denial of Tevalan's application for asylum and withholding of removal. Respondent has moved to dismiss Tevalan's appeal from the denial of his asylum application, arguing this court lacks jurisdiction to review that matter because the application was dismissed as untimely filed. After careful review of the record, we grant respondent's motion to dismiss that portion of the petition relating to asylum, and we deny the remainder of the petition.

Specifically, we lack jurisdiction to review the IJ's determination that Tevalan did not show changed or extraordinary circumstances justifying his untimely asylum application. See 8 U.S.C. § 1158(a)(3) (no court shall have jurisdiction to review Attorney General's determination as to timeliness of asylum application). As to the denial of withholding of removal, we conclude that the BIA's ruling should be affirmed because Tevalan did not show a clear probability that he will face persecution on account of his political opinion upon return to Guatemala. See Kratchmarov v. Heston, 172 F.3d 551, 553-55 (8th Cir. 1999).

Accordingly, we grant respondent's motion to dismiss the petition as it relates to asylum, and we deny the petition as it relates to withholding of removal.
